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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ASHTON KRUKOWSKI,

Plaintiff,

v.

LVMPD et al.,

Defendants.

Case No. 2:16-cv-01701-APG-VCF

ORDER

12 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by
13 a county prisoner. Plaintiff did not file an application to proceed *in forma pauperis* or
14 pay the full filing fee for a civil action. (See ECF No. 1). Plaintiff also submitted a two-
15 page complaint containing a one-sentence allegation. (See *id.*) On July 22, 2016, this
16 Court issued an order directing Plaintiff to either file a fully complete application to
17 proceed *in forma pauperis* or to pay the full filing fee of \$400 within thirty (30) days from
18 the date of that order. (ECF No. 2 at 2). The Court also directed Plaintiff to file an
19 amended complaint on this Court's approved form within thirty (30) days from the date
20 of that order. (*Id.*) The thirty-day period has now expired, and Plaintiff has not filed an
21 application to proceed *in forma pauperis*, paid the full filing fee, or filed an amended
22 complaint. Plaintiff has filed a notice of objection to the Court's order but did not provide
23 any grounds for the objection. (ECF No. 9). Plaintiff has also filed several notices and
24 a motion to freeze pending appeal to dismiss counsel. (ECF No. 4, 5, 6, 7, 8, 10, 11).

25 After reviewing the filed notices, it appears that Plaintiff is in the middle of his
26 state criminal proceedings in the Eighth Judicial District Court and is represented by a
27 public defender. (ECF No. 4, 6). Plaintiff seems to want to dismiss his public defender
28 from his state criminal case. (ECF No. 5). In the motion to freeze proceeding until

1 appeal to dismiss counsel, Plaintiff requests that the Court freeze this case until his
 2 appeal is complete. (ECF No. 10 at 3). Plaintiff argues that he has been denied his
 3 right to effective representation and counsel. (*Id.* at 5). The Court now dismisses
 4 Plaintiff's case for failure to comply with this Court's July 22, 2016 order.¹

5 District courts have the inherent power to control their dockets and "[i]n the
 6 exercise of that power, they may impose sanctions including, where appropriate . . .
 7 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829,
 8 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's
 9 failure to prosecute an action, failure to obey a court order, or failure to comply with
 10 local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
 11 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
 12 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
 13 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
 14 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*
 15 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
 16 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
 17 for lack of prosecution and failure to comply with local rules).

18 In determining whether to dismiss an action for lack of prosecution, failure to
 19 obey a court order, or failure to comply with local rules, the court must consider several
 20 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
 21 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
 22 favoring disposition of cases on their merits; and (5) the availability of less drastic
 23 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
 24 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

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 27 ¹ The Court notes that Plaintiff is attempting to raise an ineffective assistance of
 28 counsel claim for events taking place in his ongoing state criminal case. Under Nevada
 law (which applies to Plaintiff's state criminal case), claims of ineffective assistance of
 counsel are properly raised through a post-conviction habeas corpus petition. *Pellegrini*
v. State, 34 P.3d 519, 534 (Nev. 2001).

1 In the instant case, the Court finds that the first two factors, the public's interest in
2 expeditiously resolving this litigation and the Court's interest in managing the docket,
3 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also
4 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
5 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
6 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public
7 policy favoring disposition of cases on their merits – is greatly outweighed by the factors
8 in favor of dismissal discussed herein. Finally, a court's warning to a party that his
9 failure to obey the court's order will result in dismissal satisfies the "consideration of
10 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
11 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to submit an
12 amended complaint and file an application to proceed *in forma pauperis* or pay the full
13 filing fee within thirty days expressly stated: "IT IS FURTHER ORDERED that if Plaintiff
14 does not timely comply with this order, dismissal of this action may result." (ECF No. 2
15 at 2). Thus, Plaintiff had adequate warning that dismissal would result from his
16 noncompliance with the Court's order to submit an amended complaint and file an
17 application to proceed *in forma pauperis* or pay the full filing fee within thirty days.

18 It is therefore ordered that this action is dismissed without prejudice based on
19 Plaintiff's failure to file an amended complaint and an application to proceed *in forma*
20 *pauperis* or pay the full filing fee in compliance with this Court's July 22, 2016, order.

21 It is further ordered that the motion to freeze proceeding until appeal to dismiss
22 counsel (ECF No. 10) is denied.

23 It is further ordered that the Clerk of Court shall enter judgment accordingly.

24 Dated: September 8, 2016.

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27 UNITED STATES DISTRICT JUDGE
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